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**COMBINED DECLARATION AND POWER OF ATTORNEY FOR PATENT
APPLICATION**



As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below, next to my name. I believe I am the original, first, and sole inventor (if only one name is listed below) or an original, first, and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled **HIGH PERFORMANCE DIGITAL LOOP DIAGNOSTIC TECHNOLOGY** the specification of which

 X is attached hereto.
 X was filed on 11/9/99 as
United States Application Number 09/436,620
or PCT International Application Number _____
and was amended on _____
(if applicable)

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment referred to above. I do not know and do not believe that the claimed invention was ever known or used in the United States of America before my invention thereof, or patented or described in any printed publication in any country before my invention thereof or more than one year prior to this application, that the same was not in public use or on sale in the United States of America more than one year prior to this application, and that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months (for a utility patent application) or six months (for a design patent application) prior to this application.

I acknowledge the duty to disclose all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119(a)-(d), of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

<u>Prior Foreign Application(s)</u>			<u>Priority Claimed</u>	
<u> </u> (Number)	<u> </u> (Country)	<u> </u> (Day/Month/Year Filed)	<u>Yes</u>	<u>No</u>
<u> </u> (Number)	<u> </u> (Country)	<u> </u> (Day/Month/Year Filed)	<u>Yes</u>	<u>No</u>
<u> </u> (Number)	<u> </u> (Country)	<u> </u> (Day/Month/Year Filed)	<u>Yes</u>	<u>No</u>

I hereby claim the benefit under title 35, United States Code, Section 119(e) of any United States provisional application(s) listed below

<u>60/108,471</u> (Application Number)	<u>11/14/98</u> Filing Date
<u> </u> (Application Number)	<u> </u> Filing Date

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application:

_____ (Application Number)	_____ Filing Date	_____ (Status -- patented, pending, abandoned)
_____ (Application Number)	_____ Filing Date	_____ (Status -- patented, pending, abandoned)

I hereby appoint the practitioners associated with the Customer Number provided below, with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith, and direct that all correspondence be addressed to that Customer Number.

Customer Number 21833

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of Sole/First Inventor: **Bruce E. Johnson**

Inventor's Signature: Bruce E. Johnson Date: 11/08/99

Residence: 8250 2nd Avenue NE, Seattle, WA 98115 Citizenship USA
(Address, City, State) (Country)

Post Office Address: 8250 2nd Avenue NE, Seattle, WA 98115

Full Name of Second Inventor: **Thomas J. Hammond-Doel**

Inventor's Signature: Thomas Hammond-Doel Date: 11/08/99

Residence: 3407 Snohomish Avenue, Everett, WA 98201 Citizenship USA
(Address, City, State) (Country)

Post Office Address: 3407 Snohomish Avenue, Everett, WA 98201

Full Name of Third Inventor: **Donna M. Jollay**

Inventor's Signature: Donna M. Jollay Date: 11/9/99

Residence: 1040 Stormy Ridge Court, Meadow Vista, CA 95722 Citizenship USA
(Address, City, State) (Country)

Post Office Address: P. O. Box 343, Meadow Vista, CA 95722

Full Name of Fourth Inventor: **Michael I. Thompson**

Inventor's Signature: Michael I. Thompson Date: 11/9/99

Residence: 1040 Stormy Ridge Court, Meadow Vista, CA 95722 Citizenship USA
(Address, City, State) (Country)

Post Office Address: P. O. Box 343, Meadow Vista, CA 95722

Title 37, Code of Federal Regulations, Section 1.56
Duty to Disclose Information Material to Patentability

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclosure information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) Prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made or record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

- (2) It refutes, or is inconsistent with, a position the applicant takes in:

- (i) Opposing an argument of unpatentability relied on by the Office, or

- (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;

- (2) Each attorney or agent who prepares or prosecutes the application; and

- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS
37 CFR 1.9(f) and 1.27(c)--SMALL BUSINESS CONCERN

I hereby declare that I am

☐ the owner of the small business concern identified below:

☒ an official empowered to act on behalf of the small business concern identified below:

NAME OF CONCERN: **Vixel Corporation**

ADDRESS: **11911 Northcreek Pkwy. So., Bothell Washington 98011**

I hereby declare that the above identified small business concern qualifies as a small business concern as defined in 13 CFR 121.3-18, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees under 41(a) and (b) of Title 35, U.S. Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention entitled: **HIGH PERFORMANCE DIGITAL LOOP DIAGNOSTIC TECHNOLOGY**, by inventors **Bruce E. Johnson, Thomas J. Hammond-Doel, Donna M. Jollay, and Michael I. Thompson**, described in the specification filed herewith.

If the rights held by the above-identified small business concern are not exclusive, each individual, concern or organization having rights to the invention is listed below* and no rights to the invention are held by any person, other than the inventor, who could not qualify as a small business concern under 37 CFR 1.9(d) or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e). *Note: separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27)

Name: NONE

Address: _____
☐ individual ☐ small business concern ☐ nonprofit organization

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b)).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 1001 of Title 18 of the U.S. Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

NAME OF PERSON SIGNING: KAY CHURCH

TITLE IN ORGANIZATION: Controller

ADDRESS OF PERSON SIGNING: 11911 Northcreek Pkwy. So., Bothell Washington 98011

SIGNATURE: Kay Church DATE: 11/8/99